

**LEE HARVEY OSWALD COULD NOT
HAVE BEEN LEGALLY CONVICTED
FOR HIS ASSASSINATION
OF PRESIDENT JOHN
FITZGERALD KENNEDY**

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Despite the ghost of rumor both here and abroad, to the contrary, the Warren Commission accomplished its original purpose by assembling and evaluating all ascertainable facts relating to the assassination of President Kennedy.

The staff counsel for the Warren Commission were men of great experience and legal talent. They were drawn from representative geographical and professional areas. The Commission members themselves were a highly impressive group of Republicans and Democrats.

The President's Commission on the Assassination of President Kennedy (formal title) consisted of Chief Justice Earl Warren, Sen. Richard B. Russell of Georgia, Sen. John Sherman Cooper of Kentucky, Rep. Hale Boggs of Louisiana, Rep. Gerald R. Ford of Michigan, Allen W. Dulles, a former member of the United States Diplomatic Service and former director of the Central Intelligence Agency; John J. McCloy, a former Assistant Secretary of War, a former President of the World Bank, a former United States High Commissioner for Germany. J. Lee Rankin, former Solicitor General, served as general counsel to the Commission,

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and he was aided by 14 assistant counsel and 12 other staff members throughout the investigation.

**Evidentiary Problems and Aspects Regarding
Sufficient Evidence to Legally Convict
Oswald of the Assassination**

From a legal standpoint, an analysis of the Warren Commission Report, and particularly Chapter 4 which states the case against Oswald, is of special interest because of its evidentiary aspects.

It has been widely deplored that Oswald was killed before he could be brought to trial. Naturally, our basic emotional and intellectual demands are such that the concepts of due process and fair trial must be observed. The absence of such a trial of Oswald during his lifetime, carrying with it, of course, Oswald's right to procure and present his own side of the story, has produced conjecture and speculation, and surmise which may never be solved; consequently, both lawyers and laymen have been led to the conclusion that there was much lacking in the conclusions reached by the Warren Commission.

When one reads the Warren Commission report with the eye of a lawyer concerned with admissibility and inadmissibility of evidence, the fact is inescapable that the Report, although crammed with facts that would not be admissible on the trial of Oswald for the assassination of President Kennedy, does set out the whole picture in a perspective that a criminal trial could never achieve.

The collateral to this subject is the emphasis on prejudice to the right of fair trial and the effects on the admissibility of evidence of the premature divulgence of material by the press and local law enforcement agents at the time of Oswald's first detention, including especially:

- (1) Statements made by Oswald's wife, Marina, as to

- Oswald's ownership of the assassination weapon and other facts;
- (2) Oswald's refusal to take a polygraph test;
 - (3) The results of a thoroughly discredited paraffin test, purporting to be proof of the fact that Oswald had recently fired a gun;
 - (4) Statements of police officers and prosecuting officials that they considered they had an air-tight case against Oswald.

The Warren Report promptly concludes that, while there was a legitimate area of inquiry within the scope of the public's right to know, neither the press nor the public had the right to be contemporaneously informed by the police or prosecuting authorities of the details of the evidence being accumulated against Oswald:

"... The courtroom, not the newspaper or television screen, is the appropriate forum in our system for the trial of a man accused of a crime."

"A major consequence of the hasty and at times inaccurate divulgence of evidence after the assassination of President Kennedy was simply to give rise to groundless rumors and public confusion."

Evidence That Would Have Been Admissible and Inadmissible

It is pretty well established and documented that Oswald was not denied the right to counsel. The interesting question remains as to the character of the evidence which, from the maze of material set out in the transcript of the Commission hearings and in the exhibits produced, probably could have been adduced against Oswald on trial had he lived to stand trial.

Marina's Testimony Inadmissible

There must be deleted the testimony of his wife, Marina, for although she testified on three occasions and was ques-

tioned by the press and investigative agencies on scores of others, it is difficult to find any statement which would not be more hurtful than helpful to her husband. Under Texas law, the husband and wife may, in all criminal actions, be witnesses for each other; "but they shall in no case testify against each other except in a criminal prosecution for an offense committed by one against the other." Article 714, VERNON'S ANN. C.C.P.

Considering the evidence adduced, there are many facts which appear only in the uncorroborated testimony of Marina Oswald. Chief among them are facts laying the basis for the admission of other criminal transactions—the attempt on the life of Maj. Gen. Edwin A. Walker April 10, 1963; the reputed threat to make some assault on former Vice President Richard Nixon. Whether either of these transactions would have been admissible in any event is extremely doubtful. Under Texas law, distinct criminal transactions are never admissible unless falling within some well established exception to the general rule. They must tend to connect the defendant with the offense for which he is on trial as part of a general and composite transaction. *Medina v. State*, 193 S.W.2d 196; *Morris v. State*, 198 S.W.2d 901.

It might be argued that the Walker and Kennedy incidents both showed a senseless antagonism against public figures and thus lent "credence to otherwise implausible conduct"—a sort of extension of the motive exception which is, however, ordinarily confined to sex crimes. *Head v. State*, 267 S.W.2d 419. System or *modus operandi* is another exception. *Coston v. State*, 268 S.W.2d 180.

But sharp differences exist between the two crimes: the extended, advance planning and attention given to escape routes in the Walker affair; the differing ideological images of the victims, which make Walker's demise more understandable within the framework of Oswald's known thinking than was that of President Kennedy.

In any event, it is perfectly obvious that absent Oswald's

wife's testimony, the question is academic, as there is no substantial evidence on which an attempt to introduce the prior attempts could be predicated. Texas law demands that if evidence of the commission of another crime is otherwise admissible, the rule obtains only when proof of the former may be established beyond a reasonable doubt. *Ernster v. State*, 308 S.W.2d 33.

***Remaining Evidence the Warren Commission Found
"of Probative Value"***

These consist of:

- (1) An undated note which in no way refers to Walker;
- (2) Negative testimony of a Federal Bureau of Investigation identification expert that the retrieved but damaged bullet could not be identified as coming from any particular gun, although it "could have been" fired from the rifle used to kill President Kennedy;
- (3) Photographs of the Walker premises.

Even as to these, the note was turned over to the investigating officers by Marina and could not, in the absence of this testimony, be identified with the event; and it is unclear whether the photographs were also delivered by her or were independently found on the premises by officers searching it with her verbal permission.

The Nixon incident, of course, has no other corroboration.

In January 1964 Marina Oswald and her business manager, James Martin, told Robert Oswald, Lee Harvey Oswald's brother, that Oswald had once threatened to shoot former Vice President Richard Nixon. When Marina Oswald testified before the Warren Commission February 3-6, 1964, she had failed to mention the incident when she was asked whether Oswald had ever expressed any hostility toward any official of the United States. The Commission first learned of this incident when Robert Oswald related it to

FBI agents February 19, 1964 and to the Commission February 21.

Marina Oswald appeared before the Commission June 11, 1964 and testified that a few days before her husband's departure from Dallas to New Orleans April 24, 1963, he finished reading the morning newspaper,

"... and put on a good suit. I saw that he took a good pistol. I asked him where he was going and why he was getting dressed. He answered, 'Nixon is coming. I want to go and have a look.' He also said he would use the pistol if opportunity arose."

She reminded him that after Walker's shooting, he promised he would never repeat such an act. Marina Oswald related the events which followed:

"I called him into the bathroom. I closed the door and I wanted to prevent him and then I started to cry; and I told him that he shouldn't do this and that he promised me. I remember that I held him. We actually struggled for several minutes and then he quieted down."

***Other Facts of Oswald's Guilt Depending Entirely
on Marina's Testimony***

As to the assassination of President Kennedy itself, it was Marina Oswald who identified the blue jacket found in the schoolbook depository building as belonging to her husband, Lee Harvey Oswald. When he left home that morning, Marina, who was still in bed, suggested that he wear the jacket. A blue jacket, later identified by her as Oswald's, subsequently was found in the building, apparently left behind by Oswald.

The shirt, threads from which were found caught in the rifle, as being the one she thought he wore to work on the morning of November 22, 1963, was identified by her.

In a crevice between the butt plate of the rifle and the

wooden stock was a tuft of several cotton fibers of dark blue, gray-black, and orange and yellow shades. On November 23, 1963 these fibers were examined by Mr. Paul M. Stombaugh, a special agent assigned to the hair and fiber unit of the FBI laboratory. He compared them with the fibers found in the shirt which Oswald was wearing when arrested in the Texas Theater. This shirt was also composed of dark blue, gray-black, and orange-yellow cotton fibers. Stombaugh testified that the colors, shades, and twist of the fibers found in the tuft on the rifle matched those in Oswald's shirt.

Stombaugh explained in his testimony that in fiber analysis, as distinct from fingerprint or firearms identification, it is not possible to state with scientific certainty that a particular small group of fibers comes from a certain piece of clothing to the exclusion of all others, because there are not enough microscopic characteristics present in fibers. Judgments as to probability will depend on the number and types of matches. He concluded:

"There is no doubt in my mind that these fibers could have come from this shirt. There is no way, however, to eliminate the possibility of the fibers having come from another identical shirt."

Marina Oswald testified that she thought her husband wore this shirt to work on that day. Mary Bledsoe, a former landlady of Oswald's, saw him on a bus approximately 10 minutes after the assassination, and identified the shirt as being the one worn by Oswald, primarily because of a distinctive hole in the shirt's right elbow. Although Oswald returned to his rooming house after the assassination and when questioned by the police claimed to have changed his shirt, the evidence indicates that he continued wearing the same shirt which he was wearing all morning and which he was still wearing when arrested.

Although Stombaugh was unable to estimate the period of time the fibers were on the rifle, he said that the fibers

"were clean, had good color to them, there was no grease on them, and they were not fragmented. They looked as if they had just been picked up." The Commission concluded that the relative freshness of the fibers was strong evidence that they were caught on the rifle on the morning of the assassination or during the preceding evening. The Commission was able to conclude that the fibers most probably came from Oswald's shirt. This adds to the conviction of The Commission that Oswald owned and handled the weapon used in the assassination.

The white jacket found in the parking lot along Oswald's reconstructed escape route after shooting Officer Tippit was identified by his wife Marina as belonging to Oswald. He was wearing a zipper jacket, which he had not been wearing moments before when he had arrived home. When arrested, he did not have the jacket. Shortly after Tippit was slain, policemen found a light colored zipper jacket along the route taken by Oswald as he attempted to escape. The Dallas police radio described him as a man wearing a white jacket, etc. It was discovered by Capt. W. R. Westbrook underneath an automobile. The jacket belonged to Oswald. Marina Oswald stated that her husband owned two jackets—one blue and the one Capt. Westbrook found. She identified the one Capt. Westbrook found as being her husband's second jacket.

Marina identified the photographs of Oswald with a rifle as being snapshots she took at his request. One Sunday while Marina was hanging diapers, Oswald asked her to take a picture of him holding a rifle, a pistol, and issues of two newspapers, later identified as *The Worker* and *The Militant*. Two pictures were taken. The Warren Commission concluded that the rifle shown in these pictures is the same rifle which was found on the sixth floor of the depository building November 22, 1963.

One of the pictures shows most of the rifle's configuration. Special Agent Lyndall Shaneyfelt, a photographer expert with the FBI, photographed the rifle used in the

assassination, attempting to duplicate the position of the rifle and the lighting; after comparing the rifle in the simulated photograph with the rifle in the actual photograph, Shaneyfelt testified, "I find it to be the same general configuration. All appearances were the same." He found "one notch in the stock at this point that appears very faintly in the photograph.

The authenticity of the pictures has been established by expert testimony which links the second picture to Oswald's Imperial Reflex camera, with which Marina Oswald testified she took the pictures. The negative of that picture was found among Oswald's possessions.

Using the recognized technique of determining whether the picture was taken with a particular camera, Shaneyfelt compared this negative with the negative which he made by taking the new picture with Oswald's camera. He concluded that the negative found in Oswald's possession was exposed in Oswald's Imperial Reflex camera to the exclusion of all other cameras. Both pictures, however, have identical backgrounds and lighting and, judging from the shadows, were taken at the same angle. They are photographs of the same scene. The Commission concluded that it is reasonably certain they were taken by the same camera at the same time, as Marina Oswald testified.

Moreover, Shaneyfelt testified in his opinion the photographs were not composites of two different photographs, and that Oswald's face had not been superimposed on another body, as contended by his mother, and Oswald also. One of the photographs taken by Marina Oswald was widely published in newspapers and magazines and in many instances, the detail of the picture is different from the original and even from each of the particulars as to configuration of the rifle. The date surrounding the taking of the picture and the purchase of the rifle reinforce the belief that the rifle in the photograph is the rifle which Oswald bought from Kline's of Chicago March 20, 1963, by mail.

Marina identified the camera found in Oswald's effects as the instrument with which those photographs were made. When the photographs of Oswald with the rifle and pistol were shown to him on the evening of November 23 and the morning of November 24, Oswald sneered, saying that they were fake photographs, that he had been photographed a number of times the day before by the police, that they had superimposed upon the photographs a rifle and a revolver. He insisted a number of times that the smaller photograph was either made from the larger photograph or the larger photograph was made from the smaller, and that at the proper time, he would show that the pictures were fakes. He was told that the two small photographs were found in the Paine garage. At that point, Oswald refused to answer any further questions. Marina Oswald testified she took the two pictures with her husband's Imperial Reflex camera when they lived on Neely Street. Her testimony was fully supported by the photographer expert, who testified in his opinion the pictures were not composites.

Marina Alone Identifies the Rifle

Most important of all, Marina Oswald alone identified the rifle as the one which Oswald owned, testified that she had seen him practice with it, that it had been moved from New Orleans to Dallas in Ruth Paine's stationwagon, and that it had been stored in a green and brown blanket in the Paine garage. She said that it was the only rifle owned by her husband following his return from the Soviet Union in June 1962. It had been purchased in March 1963 and taken to New Orleans, where Marina Oswald saw it in their rented apartment during the summer of 1963. She said he sat on the screened-in porch at night practicing with the rifle by looking through the telescopic site and operating the bolt. In September 1963 Oswald loaded their possessions in a stationwagon owned by Ruth Paine, who invited Marina

and the baby to live at her home in Irving, Texas. Marina stated that the rifle was among these possessions.

***Rifle Stored in Blanket in Paine Garage until
November 22, 1963***

From September 24, 1963 when Marina arrived in Irving from New Orleans until the morning of the assassination, the rifle was, according to the evidence, stored in a green and brown blanket in the Paine's garage among Oswald's other possessions. About one week after returning from New Orleans, Marina was looking in the garage for parts to the baby's crib and thought the parts might be in the blanket. When she started to open the blanket, she saw the stock of the rifle. Ruth and Michael Paine both noticed the rolled-up blanket in the garage at the time Marina Oswald was living in their home.

About three hours after the assassination, a deputy sheriff and detective saw the blanket roll tied with string lying on the floor of the Paine's garage. Stombaugh, with the FBI lab, examined the blanket and discovered a bulge approximately 10 inches long midway in the blanket. The bulge was apparently caused by a hard, protruding object which had stretched the blanket's fiber. It could have been caused by the telescopic site of the rifle, which was approximately 11 inches long.

This is the only eye-witness testimony connecting Oswald with the assassination weapon or definitely identifying his clothing. Other descriptions of the clothing showed the usual contradictions.

Marina Oswald is also the only source of a wealth of background information, including facts forming the basis of the interpretation of Oswald's character, on which the "motive" of the crime depends.

The statement that Oswald wanted to hijack an airplane for transportation to Castro's Cuba is an example. She testified that he had earlier laid plans to reach Cuba

by hijacking an airliner flying out of New Orleans, but she refused to cooperate and urged him to give it up, which he finally did. He went to Mexico on September 26, 1963 through October 3, 1963. Marina testified that Oswald told her that the purpose of the trip was to evade the American prohibition on travel to Cuba and to reach that country. He cautioned her that the trip and its purpose were to be kept strictly secret.

Connecting Oswald with the name Hidell was important because the murder weapons were purchased in that pseudonym; Mrs Oswald testified to signing the name on certain cards at his insistence. In Oswald's wallet at the time of his arrest were selective service notices of classification and a Marine certificate of service in the name of Alek James Hidell. On the Hidell selective service card, there appeared a signature "Alek J. Hidell" and a photograph of Lee Harvey Oswald. Experts on questioned documents from the Treasury Department and FBI testified that the Hidell cards were counterfeit photographic reproductions made by photographing the Oswald cards, retouching the resulting negatives, and producing the prints from the retouched negatives. The Hidell signature on the notice of classification was in the handwriting of Oswald.

Marina Oswald testified she first learned of Oswald's use of the fictitious name "Hidell" in connection with his pro-Castro activities in New Orleans. According to her testimony, he compelled her to write the name "Hidell" on membership cards in the space designated for the signature of the "chapter president." The name "Hidell" was stamped on some of the "chapter's" printed literature and on the membership application blanks. Marina Oswald testified, "I knew there was no such organization. And I know Hidell is merely an altered Fidel, and I laughed at such foolishness." Hidell was a fictitious president of an organization of which Oswald was the only member. In all probability, Hidell was the person entitled to receive mail at Oswald's box in Dallas, and that is the name he

ordered the rifle under from the Chicago mail order house. However, the portion of the application which lists the names of persons other than applicant entitled to receive mail there at the postoffice was thrown away after the box was closed May 14, 1963.

Excluding the Physical Evidence

Defense counsel representing Oswald would certainly be interested in the exclusion of all physical evidence. The case for the prosecution would show that Oswald had purchased the rifle; that he moved it from New Orleans to Dallas, wrapped in a green and brown blanket, which he left with his other belongings in the garage of the Paine residence in Irving; that Oswald took it from the blanket on the night of November 21, placed it in a bag made from paper he had obtained in the schoolbook depository; and that he carried it to work with him the next morning, representing that the package contained curtain rods.

The Illegal Search of Paine Residence

After the arrest on the afternoon of November 22, the Dallas police obtained a search warrant for the Oswald residence on North Beckley Street, but no warrant was obtained for the Paine house until the following day. Nevertheless, police went to the Irving house of Mrs. Paine, where Marina Oswald was residing and Oswald spent his weekends and stored his effects. *They conducted a search of Oswald's belongings that afternoon without a warrant and without his consent.*

It is clear from Commission documents that permission to be interviewed was given by Mrs. Paine, and that Mrs. Oswald, who was present, made no objection. *It is not at all clear that she gave consent to a search, however, or that she in any way understood what her rights and those of her husband were.*

The most important discovery at this time was the blanket

in which the rifle had been wrapped, fibers from which were later identified as being identical in all measurable characteristics, with fibers found in the abandoned bag beneath the assassination window. The Commission said, "Like hairs, the various types of natural and artificial fibers can be distinguished from each other under the microscope. Like hairs, too, individual fibers are not unique, but the expert usually can distinguish fibers from different fabrics. A major identifying characteristic of most fibers is color, and under the microscope many different shades of each color can be differentiated—for example, 50 to 100 shades of green or blue and 25 to 30 shades of black." The microscopic appearance of three types of fibers—cotton, wool and viscose—is illustrated in the Commission's exhibit on Page 589 of the Report, which is a sketch of cotton, wool and viscose and their characteristics. Two of these—cotton and viscose, were the subject of testimony by expert Stombaugh:

"Cotton is a natural fiber. Under the microscope, it resembles a twisted soda straw, and the degree of twist is an additional identifying characteristic of cotton. Cotton may be mercerized or (more commonly) unmercerized.

"Viscose is an artificial fiber. A delustering agent is usually added to viscose to cut down its luster, and under the microscope, this agent appears as millions of tiny spots on the outside of the fiber. The major identifying characteristics of viscose, apart from color, are diameter—hundreds of variations being possible—and size and distribution of delustering agent, if any."

As to the blanket, Stombaugh examined it and pointed out that it was composed of brown and green fibers, of which approximately 1-2 per cent were woolen, 20-35 per cent were cotton and the remainder delustered viscose. The viscose fibers in the blanket were of 10-15 different diameters and also varied slightly in shade and in the size and distribution of the delustering agent. (The apparent cause

of those variations was that the viscose in the blanket consisted of scrap viscose.) The cotton also varied in shade, with about 7-8 different shades of green cotton being present, but was uniform in twist.

When received by Stombaugh, the blanket was folded in approximately the shape of a narrow right triangle. A safety pin was inserted in one end of the blanket, and also at this end loosely wrapped around the blanket was a string. On the basis of creases in the blanket in this area, it appeared that the string had been tied around the blanket rather tightly at one time while something was inside the blanket. Other creases and folds were present, and among them a crease or hump approximately 10 inches long. That crease must have been caused by a hard, protruding object approximately 10 inches long, which had been tightly wrapped in the blanket, causing the yarn to stretch so that the hump was present even when the object had been extracted. The hump was approximately the same length and shape as the telescope site on the C 2766 rifle and its position with respect to the ends of the blanket was such (based on the manner in which the blanket was folded when Stombaugh received it) that had the rifle been in the blanket, the telescopic site could have made the hump.

Blanket Scraped for Removal of Fibers and Hairs

After receiving the blanket, Stombaugh scraped it to remove the foreign textile fibers and hairs that were present. He found numerous textile fibers of various types and colors and a number of limb, pubic and head hairs, all of which originated from persons of the Caucasian race and had fallen out naturally, as is shown by the shape of the roots. Several of the limb and pubic hairs matched samples of Oswald's limb and pubic hairs, obtained by the Dallas police, in all observable characteristics, including relatively unusual characteristics. For example, in both Oswald's pubic hairs and some of the blanket pubic hairs

the color was a medium brown, which remained constant to the tip, where it changed to a very light brown and then became transparent due to the lack of color pigments; the diameters were identical and rather narrow for pubic hairs; the hairs were very smooth, lacking the nubbinness characteristic of pubic hairs, and the upper two-thirds were extremely smooth for pubic hairs; the tips of the hairs were sharp, which is unusual for pubic hairs; the cuticle was very thin for pubic hairs; the scales display only a very small protrusion; the pigmentation was very fine, equally dispersed, and occasionally chained together, and displayed only very slight gapping; cortical fusi were for the most part absent; the medulla was either fairly continuous or completely absent; and the root area was rather clear of pigment and contained only a fair amount of particle fusi, which was unusual.

Similarly in both Oswald's limb hairs and some of the limb hairs from the blanket, the color was light brown through its entire length, the diameter was very fine and did not noticeably fluctuate; the tips were very sharp, which is very unusual; the scales were of medium size, with a very slight protrusion; there was a very slight gapping of the pigmentation near the cuticles; there was an unusual amount of cortical fusi equally distributed through the hair shafts; and the medulla was discontinuous, granular, very bulbous and very uneven.

Other limb, pubic and head hairs on the blanket did not come from Oswald.

Paper Bag Contained Identifiable Fibers

Stombaugh received the paper bag in which the rifle was allegedly wrapped. Fibers found inside the bag were compared with the brown viscose and green cotton fibers taken from the blanket. The brown viscose fibers found in the bag matched some of the brown viscose fibers from the blanket in all observable characteristics, such as shape,

diameter, and size and distribution of delustering agent. The green cotton fibers found in the bag were like those from the blanket, varying in shape but of a uniform twist. Each green cotton fiber from the bag matched some of the green cotton fiber from the blanket in all observable characteristics, such as shade and degree of twist. Like the blanket cotton fibers, the cotton fibers found in the bag were unmercerized.

Inadmissibility of Blanket and Paper Bag

Oswald defense counsel might well wish to raise the question of whether the admission of the blanket evidence and the paper bag evidence, in effect as a result of the search of Oswald's belongings that afternoon without a warrant and without his consent, would be such evidence that would constitute a violation of the guarantees of personal security under the Fourth and Fourteenth Amendments of the Federal Constitution.

In Texas the general rule was that the defendant has no standing to object to the search of another's premises and that a wife has implied authority to consent to the search of her husband's premises, provided she understands the nature of her act and is not subjected to implied coercion. *Nagel v. State*, 71 S.W.2d 285; *Brown v. State*, 235 S.W.2d 142. Slight circumstances will suffice to avoid the consent. *Jordan v. State*, 11 S.W.2d 323. Since *Mapp v. Ohio*, 367 U.S. 643, however, such cases as stated must be reassessed and evaluated in the light of Fourth Amendment rights of defendants and the status of evidence that is inadmissible if obtained through an apparent or questioned illegal search. *Lanza v. New York*, 370 U.S. 139.

The Supreme Court has not taken a literal or mechanical approach to the question of what constitutes a search or seizure. A hotel room, an unoccupied taxicab, as well as a store, apartment, or automobile may well fall within

the protected area. The protection extends to the effects of people, as well as to the person and houses. *United States v. Hartz*, 179 F.Supp. 913 (S.D. Calif. 1959). Invitation to enter for an interview will not justify a search after entry. *Robertson v. State*, 375 S.W.2d 457. If the search is without a warrant, the prosecution must show a consent that is unequivocal and specific, freely and intelligently given. *An invitation to enter a house extended to armed officers is usually considered an invitation secured by force.* *Gatlin v. United States*, 326 F.2d 666; *United States v. Roberts*, 179 F.Supp. 478.

Certainly it is doubtful that such consent was waived or extended by either Mrs. Paine or Marina Oswald. Even if Mrs. Paine consented to the examination of property in her garage known to belong to Oswald, it is fairly obvious that Marina Oswald, considering her scanty knowledge of English and Ruth Paine's difficulty with Russian in a crisis, gave no legal, intelligent consent to a search of the garage, although Marina pointed out the blanket and the belief, as she said, that it still contained the rifle. Because of these factors, there would seem to be a strong basis for excluding all of the evidence that was developed and produced through the leads and statements made by Marina Oswald, the wife of the deceased Oswald.

Weaknesses in Other Witnesses

An adroit defense lawyer would not altogether be defenseless as to remaining witnesses. While Oswald was seen on the sixth floor of the Depository Building from the southeast window from which the shots were fired thirty-five minutes before the assassination, his duties in filling book orders were primarily on the first and sixth floors. The only eye witness who ever identified him at the window first refused to make a positive identification, saying only that Oswald looked like the man he saw. Oswald's sub-

sequent departure from the building was reasonably subject to his explanation that with all the commotion, he did not think anymore work would be done that day.

It would be a fruitless task to attempt to repel evidence of Oswald's subsequent movements, (boarding a bus and leaving it; taking a taxicab; changing his clothes at his rooming house; walking down certain streets where he was seen entering the Texas Theater; resisting arrest there; possessing and attempting to use a pistol, since conduct of an accused following the commission of a crime may be inquired into generally, 23 TEXAS JURISPRUDENCE 190; and flight constitutes circumstantial evidence of guilt, *Vaccro v. United States*, 296 F.2d 500. Nor would it be necessary to show Oswald was aware that he was suspected of the crime. *McCormick & Ray*, TEXAS LAW OF EVIDENCE 394. While it would be necessary to show, as to the attempt to resist arrest in the theater, that Oswald knew he was being arrested, the evidence on this point is undisputed. *Chester v. State*, 300 S.W. 57.

There remains a question of whether Tippit's murder would be admissible. As a subsequent similar offense, it would be excluded. *Gross v. State*, 135 S.W. 373. As part of a subsequent escape attempt, it could not be shown until it first had been shown that an effort was being made to arrest him. Here the prosecution might succeed, on the proposition that the description being circulated of the President's assassin was sufficient to raise an inference that Tippit intended to hold Oswald for questioning.

The testimony of Mrs. Helen Markham, an eye witness standing on the street corner, was merely that after the men talked, Tippit got out of the car on one side and Oswald walked forward on the other side and shot him. This witness was hysterical. Her initial description of Oswald, as well as facts she stated regarding the time of the occurrence, was inaccurate. Her original identification of Oswald in a line-up occurred after she had been given sedatives, and she remained hysterical for several hours after the event. The

admissibility of the Tippit murder, accordingly, is at least arguable.

Assuming it to be admissible, however, as part of the general flight picture, the transcript of the Warren Commission hearings show the usual contradictions which arise to plague the prosecution. Domingo Benavides, the eye witness closest to Oswald, refused to identify him. The Davis sisters were confused as to whether they called the police before or after they saw Oswald leave the car and walk across the lawn. William Scoggins, the taxi driver, and an eye witness to the Tippit murder, made his identification at the same line-up where William W. Whaley, (now deceased), the driver in whose taxi Oswald made part of the trip from the Depository Building to his rooming house, and it appears from the latter and other sources that Oswald's remonstrances against being placed with the other persons in the line-up were so pronounced that any person could have picked him out as the accused without ever having seen him before.

There are, however, a number of other witnesses who, while they did not see the actual shooting, did see Oswald leave the scene and who would not be easy to attack.

Physical and Documentary Evidence—Its Value

Had Oswald lived and had his defense counsel been very lucky, he would be able at Oswald's trial either to exclude or impeach the testimony of a large number of key witnesses, whose accounts add so much to the strength of the Warren Commission report. This doesn't mean that what would be left, granting the unlikely event of success in all these endeavors, would leave room for reasonable doubt of Oswald's guilt, but the surprising fact is the conviction in such an event would depend to an amazing degree on documentary evidence and its interpretation by experts.

In other words, the circumstantial evidence is either more cogent or less subject to attack than the direct. Both the

rifle recovered in the Depository Building and the pistol found on Oswald's person were traced to his possession by documents with the aid of handwriting experts. The snapshots which Marina Oswald gave to police officers also are established by expert testimony identifying the rifle and pistol Oswald was holding, proving that the pictures were made with his camera.

While testimony that Oswald brought the dismantled rifle to the Depository Building is subject to attack because both the Fraziers many times described a brown package Oswald brought from Irving to Dallas on the day of the assassination as being much smaller than it would have had to be to contain a weapon, the bag itself found at the scene was shown to be made from materials to which Oswald had access, and the mute testimony of the object overpowers the statement of the witnesses.

All fingerprints on the boxes from which the assassin fired were latent; sophisticated criminological procedures were necessary to develop and identify them. Expert testimony further links the rifle with Oswald to the shirt fibers caught on its surface. Other testimony establishes that the bullet found in the Presidential limousine was fired by the rifle that was recovered, while the autopsy reports and ballistics firing tests make plain the manner in which the shots hit their mark.

If the green and brown blanket found in the Paine garage were admitted into evidence, expert testimony links fibers from it with those in the brown paper bag, suggesting that Oswald removed the rifle from the blanket and carried it to the Depository Building in the bag, while human hairs found in the blanket itself were linked from body hairs taken from Oswald after his arrest.

To the lawyer and prosecuting attorney, the Warren Report conceived as a criminal investigation carried to the utmost limits, illustrates the importance of utilizing the laboratory and experts as sources of the most cogent evidence in criminal proceedings.

It also points up the usual difficulties in dealing with the testimony of living witnesses.

The Warren Report was helpful in pointing the way toward protection of our standards of fair trial, undue publicity, toward reforms in protective procedure, and toward desirable future legislation. It represents a new synthesis which may be followed to advantage in future historicolegal investigations.